

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION**

**BID FOR POSITION, LLC,**

**Plaintiff,**

**v.**

**AOL, LLC, GOOGLE, INC.,  
MICROSOFT CORP., and MIVA, INC.,**

**Defendants.**

**CASE NO. 2:07-cv-582 JBF/TEM**

**Jury Trial Demanded**

**Joint Statement on Claim Terms in Controversy**

**1. Agreed Claims and Terms**

<b>Claim term or phrase</b>	<b>Agreed construction</b>
“bid”	“an offer of a price”
“incrementing the first bid”	“increasing the first bid”

**2. Construction of Disputed Terms**

<b>Claim Term</b>	<b>Plaintiff’s Construction</b>	<b>Defendants’ Construction</b>
“first” and “second”	“first” and “second” are used in the claim to distinguish two instances of the same thing. For example, “first bid” means a bid other than a “second bid,” and “first bidder” means a bidder other than a “second bidder.” The terms “first” and “second” do not refer to time sequence.	<p>The terms “first bid” and “second bid” are used to distinguish one bid from another bid that is different from the first.</p> <p>The terms “first bidder” and “second bidder” are used to distinguish one bidder from another bidder that is different from the first.</p> <p>The terms “first” and “second” do not refer to time sequence.</p>

“maintain”	<p>Alternative 1: No construction necessary.</p> <p>Alternative 2: “continue or keep [a position]”</p>	“keep”
“selected position of priority”	<p>Alternative 1: no construction necessary.</p> <p>Alternative 2: “the position of priority selected from the bid management data received from the first bidder”</p> <p>Alternative 3: “selected” means “chosen based on fitness or preference.” No construction is necessary for “position of priority.”</p>	“the specific position expressly chosen by the bidder”
“information for selecting one of the two or more positions of priority that the first bidder wishes to maintain in the auction” and “selected one of the two or more positions of priority that the first bidder wishes to maintain in the auction”	No construction necessary (except to the extent the terms contained in this phrase are separately construed elsewhere).	“information entered by the bidder that indicates the bidder’s express choice of one of the two or more positions of priority in the auction”
“checking for whether a first bid from the first bidder exceeds a second bid from the second bidder”	<p>Alternate 1: “checking” means “verifying, comparing, inspecting, or ascertaining;” the rest of phrase requires no construction.</p> <p>Alternate 2: “checking” means “verifying, comparing, inspecting, or ascertaining;” “exceeds” means “greater than”; and the rest of the phrase requires no construction</p>	“determining whether the bid entered by the first bidder is larger than the bid entered by the second bidder”

“the auction for determining continuing priority for providing an ongoing service”	<p>Alternative 1: No construction necessary.</p> <p>Alternative 2: “continuing priority” means “ongoing priority.”</p> <p>“Ongoing service” means “a service that is ongoing, continuing or in progress.”</p>	“the auction that determines priority for each instance that a service is provided during a continuing period”
“wherein the relative position of priority for providing the service for the first bidder is dependent on whether the value of the first bid exceeds the value of the second bid” (and the analogous limitation where “first” and “second” are interchanged)	<p>Alternative 1: No construction necessary (except to the extent the terms contained in this phrase are separately construed elsewhere).</p> <p>Alternative 2: “value” means “relative worth, utility, or importance.”</p>	“where the bidder that bids the higher amount always gets priority over the bidder that bids the lower amount”
“input device”	“input device” means “a device for transferring data into a processor system.”	“bidder terminal or other data entry device at the bidder’s location”

### **3. Rebuttal to proposed constructions**

#### **A. Plaintiff’s Rebuttal**

In support of its proposed claim constructions, Bid For Position argues that its constructions are supported by the ordinary meaning as understood by a person of skill in the art, the claims themselves, the specification, and prosecutions history. Defendants’ constructions, in contrast, are not. These arguments are more fully set forth in Plaintiff’s opening brief in support of its constructions filed on May, 12, 2008.

**B. Defendants' Rebuttal**

In support of their proposed claim constructions, Defendants propose constructions that are in full accord with the ordinary meaning of the terms as they would be understood by a person of skill in the art, in view of the claims themselves, the specification, and prosecution history. To the extent Plaintiff offers constructions for the disputed claim terms, such constructions, ignore the intrinsic evidence and seek to improperly broaden the claims. These arguments are more fully set forth in Defendants' opening brief in support of its constructions filed on May, 12, 2008.

**4. Witnesses and brief description of witness testimony**

The parties will not call witnesses at the claim construction hearing.

Date: May 12, 2008

Respectfully submitted,

By /s/

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